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No. 04-1618

IN THE

Supreme Court of the United States

NORTHERN INSURANCE COMPANY OF NEW YORK,
Petitioner,

v.

CHATHAM COUNTY, GEORGIA,
Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY BRIEF FOR PETITIONER

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the Brief for Petitioner remains accurate.

TABLE OF CONTENTS

RULE 29.6 STATEMENT i

TABLE OF AUTHORITIES iii

I. THE EXERCISE OF DELEGATED STATE POWER DOES NOT IMBUE A COUNTY WITH SOVEREIGN IMMUNITY 3

II. THERE IS NO SOUND BASIS FOR IMMUNIZING COUNTIES FROM *IN PERSONAM* ADMIRALTY SUITS 11

CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

CASES

Alden v. Maine, 527 U.S. 706 (1999) 3, 4

Bolden v. SEPTA, 953 F.2d 807 (3d Cir. 1991) 10

Cent. Va. Cmty. Coll. v. Katz,
546 U.S. _ (2006) 3

Chicot County v. Sherwood,
148 U.S. 529 (1893) 11

City of Columbus v. Ours Garage & Wrecker Serv., 536 U.S. 424 (2002) 5

City of Lafayette v. La. Power & Light Co.,
435 U.S. 389 (1978) 5, 6

Cmty. Communications Co. v. City of Boulder,
455 U.S. 40 (1982) 5, 6

Cowles v. Mercer County,
74 U.S. (7 Wall.) 118 (1868) 11

Edelman v. Jordan, 425 U.S. 651 (1974) 7, 8

Ex parte State of New York, No. 1,
256 U.S. 490 (1921) 13

Fed. Mar. Comm'n v. S.C. State Ports Auth.,
535 U.S. 743 (2002) 1, 3, 12

Ford Motor Co. v. Dep't of Treasury,
323 U.S. 459 (1945) 8

Griffin v. County Sch. Bd., 377 U.S. 218 (1964) 3, 5

Hafer v. Melo, 502 U.S. 21 (1991) 7

Hess v. Port Auth. Trans-Hudson Corp.,
513 U.S. 30 (1994) 4, 7, 13

Hines v. Ga. Ports Auth.,
604 S.E.2d 189 (Ga. 2004) 11

Holt Civic Club v. City of Tuscaloosa,
439 U.S. 60 (1978) 2, 17

Hoover v. Ronwin, 466 U.S. 558 (1984) 4

Jinks v. Richland County, 538 U.S. 456 (2003) 1

The King v. Forty-Nine Casks of Brandy,
166 Eng. Reg. 401 (Adm. 1836) 16

Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency, 440 U.S. 391 (1979) 2, 4

Lincoln County v. Luning, 133 U.S. 529 (1890) 13

Moor v. County of Alameda,
411 U.S. 693 (1973) 4, 9

Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274 (1977) 7

Nebraska City v. Campbell,
67 U.S. 590 (2 Black) 590 (1863) 15

Nelson v. Leland, 63 U.S. (22 How.) 48 (1860) 16

Owen v. City of Independence,
445 U.S. 622 (1980) 15

Parker v. Brown, 317 U.S. 341 (1943) 5

Pennhurst State Sch. & Hosp. v. Halderman,
465 U.S. 89 (1979) 6, 7

Regents of the Univ. of Cal. v. Doe,
519 U.S. 425 (1996) 4, 7

Riddle v. Proprietors of the Locks & Canals,
7 Mass. 169 (1810) 14

Russell v. The Men of Devon,
100 Eng. Rep. 359 (K.B. 1788) 14, 15

United States v. The Schooner Betsey,
8 U.S. (4 Cranch) 443 (1807) 16

Weightman v. Corp. of Wash.,
66 U.S. (1 Black) 39 (1862) 14, 15

Wis. Pub. Intervenor v. Mortier,
501 U.S. 597 (1991) 5

Workman v. City of New York,
179 U.S. 552 (1900) 2, 3, 11, 12, 13

CONSTITUTIONAL PROVISIONS

Ga. Const. art. III, § IX, ¶ VI(b) 8

STATE STATUTES

Ga. Code Ann. § 32-5-20 8

Ga. Code Ann. § 32-5-21 ..... 8, 9

Ga. Code Ann. § 32-5-22 8

Ga. Code Ann. § 32-5-25 ..... 8, 9

Ga. Code Ann. § 36-1-3 13

Ga. Code Ann. § 36-5-22.1 9

Ga. Code Ann. § 36-17-1 9

Ga. Code Ann. § 36-17-2 9

Ga. Code Ann. § 36-30-1 ..... 13, 14

Greater New York Charter, 1897 N.Y. Laws ch. 378 13

REGULATIONS

33 C.F.R. § 117.1 10

OTHER AUTHORITIES

81A C.J.S. *States* (2005) 13

Caleb Nelson, *Sovereign Immunity as a Doctrine of Personal Jurisdiction*,
115 HARV. L. REV. 1559 (2002) 13

REPLY BRIEF FOR PETITIONER

Confronted with an unbroken line of precedent squarely rejecting the extension of sovereign immunity to counties and other political subdivisions, Chatham County makes no attempt to distinguish—and, indeed, does not even mention—a number of this Court's decisions establishing that counties are not entitled to sovereign immunity. *See, e.g., Jinks v. Richland County*, 538 U.S. 456, 466 (2003) (counties and other "municipalities, unlike States, do not enjoy a constitutionally protected immunity from suit"). The County instead raises two novel—and ultimately insupportable—arguments in defense of the court of appeals' conclusion that it may invoke sovereign immunity as a defense to this admiralty action.

The County first contends that a State's political subdivisions are cloaked in sovereign immunity whenever they exercise delegated state power and whenever there is a "potential risk" that a judgment might be paid from funds received from the State. Resp. Br. at 5. This unconventional understanding of sovereign immunity is premised upon the notion that there are two distinct arm-of-the-state tests—one for cases that fall within the Eleventh Amendment's textual scope and another, purportedly "broader" standard that applies "outside the confines of the Eleventh Amendment." *Id.* at 14. But the County's submission cannot possibly be reconciled with the fundamental principle—recognized even by the County—that sovereign immunity emanates only from the constitutional structure, and that the Eleventh Amendment is merely "'one particular exemplification of that immunity.'" *Id.* at 28 (quoting *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 753 (2002)). A single sovereign immunity doctrine can give rise to only a single arm-of-the-state test for determining governmental entities' eligibility for immunity. This Court repeatedly has made clear that the

arm-of-the-state test is significantly more stringent than the test that the County here proposes.

Moreover, notwithstanding the County's assertion that its proposed standard would reserve sovereign immunity for "special and unique circumstances," Resp. Br. at 9, the County's proposed framework would, in reality, obliterate the well-established distinction between sovereign States and nonsovereign political subdivisions, and distort the sovereign immunity doctrine beyond recognition. Indeed, adopting the County's boundless notion of sovereign immunity would extend sovereign immunity to *all* political subdivisions—from counties and cities to school boards and local transportation authorities—because all such entities are state-law creations that exercise delegated state power and many (if not all) receive some state funding. *See Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978) ("political subdivisions such as cities and counties are created by the State as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them") (internal quotation marks omitted). But this Court has already explicitly and repeatedly rejected such a limitless formulation of sovereign immunity. *See Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 400 (1979) (reversing a court of appeals' conclusion that a bistate agency's exercise of delegated state power entitled it to sovereign immunity, because such reasoning "would extend Eleventh Amendment immunity to every bistate agency"). This Court should reaffirm that conclusion here.

As a supposedly "narrower" alternative to its delegated state powers argument, the County also contends that counties enjoy sovereign immunity from all *in personam* admiralty actions. Resp. Br. at 6. But this Court conclusively rejected that claim more than a century ago in *Workman v. City of New York*, 179 U.S. 552 (1900), and the County here suggests no good reason to revisit that holding. Even if *Work-*

man were not controlling—and it surely is—the County offers no plausible rationale for its assertion that political subdivisions should enjoy immunity protections in admiralty suits that are unavailable in other federal jurisdictional settings. The sovereign immunity doctrine applied in admiralty cases is no different from the doctrine applied in federal question cases, *see FMC*, 535 U.S. at 767 (there is no "maritime commerce" exception to state sovereign immunity), and it is beyond serious dispute that counties cannot invoke sovereign immunity in cases arising under "federal question" jurisdiction. *See, e.g., Griffin v. County Sch. Bd.*, 377 U.S. 218, 233 (1964) ("It has long been established that actions against a county can be maintained in United States courts in order to vindicate federally guaranteed rights.").

Ultimately, the County's claim of sovereign immunity cannot be reconciled with precedent or with the constitutional underpinnings of the sovereign immunity doctrine. A straightforward application of this Court's precedents demonstrates that Chatham County is *not* an arm of the State of Georgia and that it therefore is *not* entitled to invoke sovereign immunity in admiralty—or any other federal jurisdictional setting. The judgment of the court of appeals should be reversed.

I. THE EXERCISE OF DELEGATED STATE POWER DOES NOT IMBUE A COUNTY WITH SOVEREIGN IMMUNITY.

1. As this Court recently reaffirmed, "only arms of the State can assert the State's immunity." *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. _, slip op. at 2 (2006) (citing *Alden v. Maine*, 527 U.S. 706, 756 (1999)). The County concedes—as it must under both the Question Presented and this Court's precedent—that it is not an arm of the State "for Eleventh Amendment purposes." Resp. Br. at 8. The County nevertheless contends that a more permissive definition of "arm of the State" applies outside of the Eleventh Amendment con-

text and that it is entitled to sovereign immunity under that standard because it exercises delegated state power when operating the Causton Bluff Bridge. *Id.* at 14.

The County does not cite a single decision from this Court to support its contention that the "analytical framework for arm of the State determinations may well be broader outside the confines of the Eleventh Amendment." Resp. Br. at 14. Nor could it. This Court has recognized that sovereign immunity is a unitary doctrine "implicit in the constitutional design," *Alden*, 527 U.S. at 729, and has consistently applied a uniform arm-of-the-state standard, which focuses principally on whether the governmental entity's debts are paid by the State and the degree of political autonomy enjoyed by the entity. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 44-45 (1994). This familiar standard has been applied in cases that fall within the Eleventh Amendment's textual scope and cases not explicitly encompassed by the Amendment. *Compare Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 431 (1997) (Eleventh Amendment case), *with Moor v. County of Alameda*, 411 U.S. 693, 719 (1973) (non-Eleventh Amendment case).

A political subdivision's exercise of delegated state power has never been accorded significant—much less dispositive—weight in the arm-of-the-state inquiry. Indeed, this Court has "consistently refused to construe" sovereign immunity as "afford[ing] protection to political subdivisions such as counties and municipalities, *even though* such entities exercise a 'slice of state power.'" *Lake Country Estates, Inc.*, 440 U.S. at 401 (emphasis added); *see also Hoover v. Ronwin*, 466 U.S. 558, 573 (1984) ("the actions of a municipality are not those of the State itself"). The rule could hardly be otherwise, because counties and other municipal corporations are creatures of state law that necessarily exercise some slice of state authority. To hold such a delegation sufficient to endow entities with sovereign immunity would render the doctrine limitless.

Contrary to the County's submission, neither *City of Columbus v. Ours Garage & Wrecker Service*, 536 U.S. 424 (2002), which addresses preemption under the Interstate Commerce Act, nor *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991), which concerns preemption under the Federal Insecticide, Fungicide, and Rodenticide Act, even faintly indicates that the exercise of delegated state power entitles an entity to sovereign immunity. In fact, neither case addresses sovereign immunity in any way. The decisions do no more than recognize a State's well-established right to delegate powers to its political subdivisions, a point that petitioner certainly does not dispute. And the County does not even allude to *Griffin*, 377 U.S. 218, which held that a county that had been delegated the State's authority to oversee public education nevertheless was not entitled to claim sovereign immunity in a suit challenging the county's decision to close its public school system. *Id.* at 223.

Moreover, the Sherman Act cases upon which the County relies to support its contention that sovereign immunity accompanies a delegation of state power, *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978), and *Community Communications Co. v. City of Boulder*, 455 U.S. 40 (1982), are of questionable relevance because the Sherman Act's state-action exception is *not* a doctrine of sovereign immunity. The exception instead derives from this Court's construction of the Sherman Act itself and from the recognition that "nothing in the language of the Sherman Act or in its history . . . suggests that its purpose was to restrain" state action. *Parker v. Brown*, 317 U.S. 341, 350 (1943).

Moreover, to the extent that *City of Lafayette* and *Community Communications* are relevant at all, they actually *undermine* the County's sovereign immunity claim. Indeed, in *Community Communications*, the Court held that a city that exercised delegated "home rule authority"—*i.e.*, *all* of the State's legislative powers over local and municipal affairs—was not entitled to invoke the state-action exception recog-

nized in *Parker. Cmty. Communications Co.*, 455 U.S. at 54. Because "*all* sovereign authority within the geographical limits of the United States resides either with the Government of the United States, or [with] the States of the Union," the Court concluded that the delegation of state power is insufficient to imbue a political subdivision with sovereign attributes, including the right to invoke antitrust immunity. *Id.* at 53 (emphasis added; internal quotation marks omitted); *see also City of Lafayette*, 435 U.S. at 408, 412 n.42 (plurality op. of Brennan, J.) (rejecting the claim that "all governmental entities, whether state agencies or subdivisions of a State, are, simply by reason of their status as such, exempt from the antitrust laws," because "political subdivisions are not as such sovereign").[1]

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[1] The County's reliance upon *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), is similarly misplaced. Contrary to the County's characterization of that case, the Court did not even remotely suggest—let alone hold—that "five Pennsylvania counties[] were entitled to Eleventh Amendment sovereign immunity," Resp. Br. at 22, on the basis of "an express delegation of State authority," *id.* at 12. Rather the Court, after acknowledging that the "Eleventh Amendment does not apply to counties and similar municipal corporations," found that a county *official* might be immune from suit where a judgment "would have had essentially the same practical consequences as a judgment against the State itself," *and* immunity was thus necessary "to protect the state treasury from liability." *Pennhurst State Sch.*, 465 U.S. at 123 n.34 (internal quotation marks omitted). In other words, the Court held that a county official might be immune if he could be deemed an arm of the State under exactly the standard that the County here seeks to scuttle. The Court then explicitly declined to address the counties' sovereign immunity claim and instead held that—in light of the State's entitlement to sovereign immunity—an injunction against the county officials would have been an inappropriate exercise of the federal courts' pendent juris-

2. In an apparent effort to take back its concession that it is not an arm of the State for Eleventh Amendment purposes, *see* J.A. 33a, the County now argues—for the first time—that it "[c]ould [p]ossibly" use transportation funds received from the State to pay a judgment in this action. Resp. Br. at 22. This belated argument fails both as a matter of federal law and Georgia law.

Under this Court's decisions, the relevant inquiry for arm-of-the-state purposes is whether a "money judgment against a state instrumentality or official would be *enforceable* against the State," *Regents of the Univ. of Cal.*, 519 U.S. at 430 (emphasis added), not whether the state instrumentality might potentially pay the judgment out of operating funds that it previously received from the State. *See Hess*, 513 U.S. at 46 (concluding that a bistate entity was not an arm of the State because the States had "no legal liability for [its] debts"). Under the County's rationale, *any* school board or local transportation authority that receives state funding would qualify as an arm of the State simply because it "[c]ould [p]ossibly" use some of those funds to pay judgments against it. Resp. Br. at 22. That is not the law. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) (holding that a school district was not an arm of the State even though it "receive[d] a significant amount of money from the State"). Rather, this Court's cases make clear that it is the present location—not the ultimate source—of the funds sought by the judgment that matters. *See Hafer v. Melo*, 502 U.S. 21, 30 (1991) (a State's sovereign immunity is triggered only when the requested relief would "'impose a liability which must be paid from public funds *in* the state treasury'") (quoting *Edelman v. Jordan*,

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[Footnote continued from previous page]

diction because the relief would necessarily have been "partial and incomplete." *Id.* at 123-24 & n.34.

425 U.S. 651, 663 (1974)) (emphasis added); *see also Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459, 463 (1945) (finding immunity where the judgment sought would have been "satisfied by funds *in* the state treasury") (emphasis added).

Even if federal law were not sufficient to foreclose it, the County's argument fails also on its own state-law terms. The County argues that its admission below that any judgment against it would not be "satisfied by funds received . . . from the State of Georgia as part of general revenue funds provided to the County," J.A. 51a, is not controlling because it receives grants from the State Public Transportation Fund, which is not a general revenue fund, and Georgia law permits that Fund "to be used to pay a damage award in relation to a bridge." Resp. Br. at 22. This contention, however, finds no support in provisions of Georgia law cited by the County.

As an initial matter, although the County is correct that the Fund is not a general revenue fund,[2] the Department of Transportation (which administers the Fund on behalf of the State) does not appear to be authorized to make general purpose grants out of the Fund to counties at all. *See* Ga. Code Ann. §§ 32-5-21, 32-5-22 (delineating the priority of expenditures from the Fund). Even if the Department is, in fact, permitted to make grants from the Fund to counties, the statutes cited by the County would not allow a grant for the payment of a judgment against the County. Section 32-5-25 pertains only to the payment of expenses relating to the ac-

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[2] A State's general revenue fund is comprised of all public funds "not specifically authorized by the constitution or by statute to be placed in a separate fund, and not given or paid over in trust for a particular purpose." 81A C.J.S. *States* § 383 (2005). By contrast, Georgia law provides that proceeds from the State's motor fuel tax be appropriated to the State Public Transportation Fund. Ga. Const. art. III, § IX, ¶ VI(b); Ga. Code Ann. § 32-5-20.

quisition of a right of way, *see id.* § 32-5-25, and Section 32-5-21(3) simply permits the *Department* to use the Fund "[t]o pay the costs of operating the [D]epartment [of Transportation] and for any emergencies or unusual situations." *Id.* § 32-5-21(3).[3] In any event, even setting aside the County's admissions below, there is nothing in the *record* to support the County's contention that funds appropriated by the State would be used to pay the judgment in this case.

Thus, it is readily apparent that the County does not meet any definition of "arm of the State" ever countenanced by this Court. The State itself is not liable for judgments entered against the County—for actions in admiralty or otherwise—and no money *in* the State treasury will be used to pay any eventual judgment. Moreover, the County operates autonomously and is not subject to the State's day-to-day control. *See, e.g.*, Ga. Code Ann. § 36-5-22.1 (granting each county "exclusive" authority over county property, roads, and taxation); *see also Moor v. County of Alameda*, 411 U.S. 693, 719-20 (1973) (concluding that a county was not an arm of the State where it possessed "independent status" and was not a "mere agent of the State"). This Court has never found a political subdivision to be an arm of the State under like circumstances.

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[3] The provisions of Title 36, Article 17, cited by the County offer no more support for the County's claims. Grants to counties for "any public purposes," made under Section 36-17-1, are paid not out of the State Public Transportation Fund, but rather from the State's general revenues. *See* Ga. Code Ann. § 36-17-2 ("Office of Treasury and Fiscal Services is authorized and directed to grant such funds to the counties of this state" only "[t]o the extent that funds are made available by the budget authorities pursuant to *the general appropriations Acts*") (emphasis added). The County's factual admission below, *see* J.A. 51a, is therefore dispositive of any claim of immunity premised on such or similar grants.

3. The jurisprudential revolution that would result from endorsing the County's expansive notion of sovereign immunity is apparent from the County's utter failure to articulate any cogent principle that constrains its sweep. The County's proposal to limit application of its delegated state power argument only to delegations of "[u]niquely [c]ore [s]overeign [f]unctions of the State," Resp. Br. at 23, fails completely as a limiting principle, as amply demonstrated by the fact that the maintenance of bridges over navigable waters supposedly so qualifies. If an activity, the state regulation of which is expressly preempted by federal law (*see* 33 C.F.R. § 117.1, note) nevertheless is a "[u]niquely [c]ore" aspect of state sovereignty, it is difficult to imagine what state activities would not be—and the County nowhere suggests a satisfactory answer, or indeed any answer at all.

The likely consequences of affirmance of the decision below are instead aptly foreshadowed by the *amicus* participation of the Southeastern Pennsylvania Transportation Authority ("SEPTA"). SEPTA, which is not an arm of the State under this Court's existing case law, *Bolden v. SEPTA*, 953 F.2d 807, 821 (3d Cir. 1991) (en banc) (Alito, J.), supports the County's position because—like the County—it receives state funding. SEPTA Br. at 2. If this Court were to hold that the mere possibility that the County might use funds previously received from the State to pay a judgment is sufficient to render it an arm of the State, SEPTA and literally thousands of other state-created entities would be transformed into arms of the State immune from suit in federal court simply because they receive some state funding. No principle of sovereign immunity law heretofore recognized by this Court supports such an untoward result.

4. To the extent that the County premises its claim of sovereign immunity in this case on a grant of immunity under Georgia law, *see* Resp. Br. at 18-21, that, too, would be unavailing. It fails first because the Georgia Supreme Court itself has recognized that a political subdivision of the State

enjoys no immunity against claims sounding in maritime law unless it qualifies as "an arm of the state under federal law." *Hines v. Ga. Ports Auth.*, 604 S.E.2d 189, 190 (Ga. 2004). "[S]tate-conferred immunity," the *Hines* court held, "is pre-empted by admiralty law." *Id.* at 191-92 (citing *Workman*, 179 U.S. at 560). Tellingly, *Hines* escapes any mention in the County's long disquisition on Georgia immunity law.

As *Hines* recognized, it has been clear for more than a century that state-law immunity is incapable of limiting the federal courts' jurisdiction to hear admiralty claims. *See Workman*, 179 U.S. at 563 ("the local decisions of one or more States cannot, as a matter of authority, abrogate the maritime law"). Far from a novel proposition of law, even in 1900 *Workman* merely presented as a straightforward application of the well-established principle that state law cannot place *any* limitations on the federal courts' jurisdiction to hear federal claims against a State's political subdivisions. *See Cowles v. Mercer County*, 74 U.S. (7 Wall.) 118, 122 (1869) (holding that an Illinois statute providing that counties could only be sued in state circuit courts could not prevent a federal court from adjudicating a claim against a county); *see also Chicot County v. Sherwood*, 148 U.S. 529, 534 (1893).

In positing that a state-law grant of immunity can limit the scope of federal jurisdiction, the County thus asks this Court to overrule a line of precedent dating at least to Reconstruction. Because the County has failed to proffer even a minimally persuasive rationale for such a radical shift in the balance of power between the federal government and the States, this Court should swiftly reject the County's invitation.

II. THERE IS NO SOUND BASIS FOR IMMUNIZING COUNTIES FROM *IN PERSONAM* ADMIRALTY SUITS.

As a supposedly "narrower" alternative ground for a ruling in its favor, the County suggests that *all* counties are

categorically immune from *in personam* admiralty suits. Resp. Br. at 6, 29. This unsupported—and insupportable—contention is no more convincing than the County's attempt to expand the arm-of-the-state doctrine to include all political subdivisions that exercise any delegated state power.

1. There is simply no legal or historical basis for concluding that, when sued in admiralty, counties enjoy a sovereign immunity defense unavailable in other jurisdictional settings. This Court has never recognized the existence of a distinct sovereign immunity doctrine unique to the admiralty context, but rather has consistently applied the same sovereign immunity standards in federal question and admiralty cases. *See, e.g.*, *FMC*, 535 U.S. at 751 n.6 (endorsing use of the traditional arm-of-the-state test in an admiralty action). Indeed, this Court conclusively resolved this argument against the County in *Workman*, where it rejected the suggestion that a municipality might enjoy some form of sovereign immunity particular to suits in admiralty. *See* 179 U.S. at 565-70.

The County's contention that *Workman* dealt exclusively "with the substantive law of admiralty" and was silent on the question of sovereign immunity (Resp. Br. at 33) is belied by the *Workman* Court's lengthy discussion of the city of New York's amenability to admiralty process and its unambiguous conclusion that "there is not limitation taking [municipal corporations] out of the reach of the process of a court of admiralty." 179 U.S. at 565; *see also id.* at 570 ("the city of New York, *unlike a sovereign*, was subject to the jurisdiction of the court") (emphasis added). Notably, the *Workman* Court explicitly equated sovereign immunity with immunity from admiralty process. *Id.* at 566 ("[W]here maritime torts have been committed by the vessels of a sovereign," admiralty courts have "declined to exercise jurisdiction . . . solely because of the immunity of sovereignty from suit . . . . [T]he doctrine . . . rests . . . on [the admiralty courts'] inability to give redress in a case where jurisdiction over the person or

property cannot be exerted."); *see also* Caleb Nelson, *Sovereign Immunity as a Doctrine of Personal Jurisdiction*, 115 HARV. L. REV. 1559, 1565 (2002) ("For members of the Founding generation who believed in sovereign immunity, the concept was relevant to *personal* jurisdiction rather than *subject matter* jurisdiction."). This discussion of the City's susceptibility to admiralty process confirms that the Court addressed not just the substantive law of admiralty, but also its own jurisdiction. *See* United States Br. at 14-20. Simply put, the Court could not have decided *Workman* as it did if municipalities had even an arguable basis for federal-law immunity from suit in admiralty.[4]

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[4] The County places extensive reliance on *Ex parte State of New York, No. 1*, 256 U.S. 490 (1921), in an effort to escape *Workman*'s reach. *Ex parte State of New York*, however, held only that *States* are entitled to sovereign immunity in *in personam* admiralty actions. *Id.* at 500. None of the parties to that case was a political subdivision, and the Court did not even allude to the question of political subdivisions' immunity from suit. *Ex parte State of New York* thus has *absolutely* no bearing on the issue decided in *Workman* and currently before this Court.

The County's attempt (Resp. Br. 35-36) to distinguish *Workman* on the ground that it dealt with a city, rather than a county, is no more convincing. At the time *Workman* was decided, the city of New York—the defendant—was itself comprised of *four* counties. *See* Greater New York Charter, 1897 N.Y. Laws ch. 378. In any event, this Court has never drawn a distinction, for sovereign immunity purposes, between counties and cities; vis-à-vis the federal government, both are nonsovereign municipal corporations. *See Lincoln County v. Luning*, 133 U.S. 529, 530 (1890) (a "county . . . is a part of the State only in that remote sense in which any city, town, or other municipal corporation may be said to be a part of the State"); *see also Hess*, 513 U.S. at 47 ("cities and counties do not enjoy Eleventh Amendment immunity"). This is true in Georgia, as elsewhere. *See* Ga. Code Ann. § 36-1-3 ("[e]very county is a body corporate"); *id.* § 36-30-1 ("the words 'city,'

2. Moreover, the common-law authorities on which the County relies—purportedly standing for the proposition that counties could not be held liable at common law for accidents involving bridges—offer little support for its blanket assertion that *all* counties are immune from *in personam* admiralty actions. These common-law decisions did not, as the County suggests, accord immunity to counties on the basis of their status as sovereigns, but instead emphasized counties' status as unfunded corporations. Because counties did not historically maintain their own revenues, members of the corporation—*i.e.*, the residents of the county—would have been jointly and severally liable for a judgment against the county, and the common law refused to impose such an inequitable burden on individuals. *See, e.g., Russell v. The Men of Devon*, 100 Eng. Rep. 359, 362 (K.B. 1788) ("if the county is to be considered as a corporation, there is no corporation fund out of which satisfaction is to be made"); *Riddle v. Proprietors of the Locks & Canals*, 7 Mass. 169, 187-88 (1810) ("[H]aving no corporate fund, and no legal means of obtaining one, each corporator is liable to satisfy any judgment rendered against the corporation. This burden the common law will not impose.").[5]

In any event, whatever the King's Bench may have held in the eighteenth century, by 1862, this Court had concluded that municipal corporations were amenable to suit for claims arising from the failure to maintain a bridge. In *Weightman*

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'town,' 'municipality,' or 'village' . . . shall be held to mean a municipal corporation").

[5] The County freely acknowledges that the immunity principle suggested by its English authorities operates "outside the strictures of admiralty jurisdiction." Resp Br. at 32. It is thus difficult to see how this principle is any "narrower" than the County's expansive vision of the arm-of-the-state doctrine.

v. Corporation of Washington, 66 U.S. (1 Black) 39 (1862), the Court concluded that the municipal corporation governing Washington, D.C., was not immune from a federal court action seeking recovery for injuries caused by the collapse of a bridge that the corporation maintained. *Id.* at 53. In so holding, the Court explicitly stated that the corporation's reliance on *The Men of Devon* amounted to "a misapplication of the doctrine there laid down." *Id.* at 52. The Court noted that unlike the instant suit against the municipal corporation, the suit in *The Men of Devon* was effectively "against the inhabitants of a district." *Id.* The *Weightman* Court cited numerous subsequent English cases to establish the "clear and undoubted" proposition that "wherever an indictment would lie [against a municipal corporation] for non-repair, an action on the case would lie at the suit of a party sustaining any peculiar damage." *Id.* at 53. *Weightman* thus makes clear that the Constitution does not immunize counties and other municipal corporations from federal court suits concerning bridge maintenance (or any other subject matter). *See also Nebraska City v. Campbell*, 67 U.S. 590 (2 Black) 590, 592 (1863) ("The law is well settled in respect to public municipal corporations, upon which the duty is imposed to construct and repair, or to keep in repair streets or bridges . . . that they are liable for any special damage arising out of neglect in keeping the same in proper condition."); *Owen v. City of Independence*, 445 U.S. 622, 638-39 (1980) ("[B]y 1871 municipalities—like private corporations—were treated as natural persons for virtually all purposes of constitutional and statutory analysis. In particular, they were routinely sued in both federal and state courts."); United States Br. at 11 n.5.[6]

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[6] The County goes to great lengths to establish that admiralty jurisdiction historically did not extend to events occurring "within the body of a county." Resp. Br. at 30-31. That effort is wasted here, however. Notwithstanding the English rule that disputes arising from conduct that took place within a county's territorial

3. The County's last argument is that the dignity accorded to the States as co-equal sovereigns requires that they be permitted to cloak their political subdivisions in immunity as they see fit. More specifically, the County contends that an essential aspect of the States' sovereignty is the ability to experiment with different modes of delegating state power to political subdivisions, and that a restrictive arm-of-the-state standard interferes with the States' ability to delegate authority and thus trenches on their dignity as co-equal sovereigns. *See* Resp. Br. at 38-40.

One would think that if reversal of the decision below would seriously imperil the dignity of the States as sovereigns, one of those States might have elected to make its voice heard in this case, and it is telling that all instead have chosen to remain silent. Indeed, the County's argument is makeweight. A decision holding that the County is not im-

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jurisdiction were heard in common-law—rather than admiralty—courts, *see, e.g.*, *The King v. Forty-Nine Casks of Brandy*, 166 Eng. Rep. 401, 410 (Adm. 1836) ("'Admiralty causes,' says Blackstone (3 Bl. Com. p. 106), 'must be causes arising wholly upon the sea and not within the precincts of any county'"), the courts of this Nation long ago rejected the historic division of authority between common-law and admiralty courts in favor of the doctrine of navigability. *See United States v. The Schooner Betsey*, 8 U.S. (4 Cranch) 443, 451 (1807); *see also Nelson v. Leland*, 63 U.S. (22 How.) 48, 56 (1860) ("Our contracted views of the English admiralty, which was limited by the ebb and flow of the tide, were discarded, and the more liberal principles of the civil law, equally embraced by the Constitution, were adopted. This law is commercial in its character, and applies to all navigable waters . . . ."). Moreover the County's authorities do not address the central question in this case: whether a county government is entitled to invoke sovereign immunity in an action that is otherwise properly within a federal court's admiralty jurisdiction.

mune from this admiralty suit would in no way curtail the States' discretion to delegate their authority to political subdivisions. States are free—and will remain free after this decision—to structure their political subdivisions as they consider best. *See Holt*, 439 U.S. at 71 (States have "wide latitude . . . in creating various types of political subdivisions and conferring authority upon them").

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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NORTHERN INSURANCE COMPANY OF NEW YORK,
PETITIONER

v.

CHATHAM COUNTY, GEORGIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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